IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 828 of 2007.

Reserved on: 24.08.2007.

Decided on: 05.09.2007.

Kartar Chand. … … Petitioner.

Versus

State of H.P. and Others. … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner:	**Mr. Ramakant Sharma, Advocate.**
For Respondents No.1 to 3:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondents No.4 to 6:	**Mr. A.K. Vashist and Mr. R.S. Kanwar, Advocates.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioner to the order passed by the Deputy Commissioner, Kangra at Dharamshala on 9.4.2007 in case No.10/2006.

The brief facts necessary for the adjudication of this petition are that the petitioner was elected as Pradhan of Gram Panchayat Ashapuri, Tehsil Jaisinghpur, District Kangra in the

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[1] ***Whether reporters of local papers may be allowed to see the judgment? Yes.***

year 2005. He was administered oath of office in the month of January, 2006. The respondents No.4 to 6 filed an election petition under Section 175 of the H.P. Panchayati Raj Act, 1994 (hereinafter referred to as the Act) for declaring the election of the petitioner null and void. The principal ground taken before the Authorized Officer was that the nomination papers of the petitioner were wrongly accepted by the Assistant Returning Officer since according to respondents No.4 to 6 he had encroached upon the Government land and was dis-qualified from contesting the election as per provisions of Section 122 sub-section (1) clause (c) of the Act. He filed detailed reply to the election petition and had denied the averments contained therein with regard to wrongfully acceptance of his nomination papers. He had specifically denied that he had encroached upon any Government land. The Authorized Officer passed the order on 30th December, 2006 against the petitioner and declared that he was not qualified to be elected as Pradhan of Gram Panchayat, Ashapuri on the ground that he had encroached upon the Government land. His election was declared null and void. He further ordered to hold a fresh election after the period of limitation for appeal. The petitioner feeling aggrieved by the order dated 30.10.2006 filed an appeal before the Deputy Commissioner, Kangra at Dharamshala on 16.11.2006. The appellate authority dismissed the appeal on 9.4.2007.

Mr. Ramakant Sharma had strenuously argued that the order passed by the Authorized Officer on 30.10.2006 and the

appellate order dated 9.4.2007 are not sustainable in the eyes of law since they are against the provisions of law. He had contended that the appellate order is not a speaking order. The learned Advocate General and Mr. A.K. Vashist appearing on behalf of the respondents have supported the orders passed by the Authorized Officer and the Deputy Commissioner.

I have heard the learned counsel for the parties and perused the record.

The position which emerges from the facts enumerated hereinabove is that the petitioner was elected as Pradhan of Gram Panchayat, Ashapuri and he was administered oath of the office in the month of January, 2006. The respondents No.4 to 6 had filed an election petition against the petitioner. The election of the petitioner was set aside on the ground that he was dis-qualified to be elected Pradhan of the Gram Panchayat. Mr. Ramakant Sharma had contended that the Authorized Officer had mis-read and mis-appreciated the statements of Om Parkash, Patwari, Prakram Chand, Office Kanungo and Krishan Kumar Sharma, Panchayat Inspector while passing the order. According to him the Patwari had admitted that the petitioner had never been ejected under Section 163 of the H.P. Land Revenue Act, 1953 nor any case of encroachment had been registered against him. Similarly, Shri Prakram Chand, Office Kanungo had admitted in the cross-examination that the signatures of Tehsildar were not there on the application and declaration.

Mr. Ramakant Sharma had drawn the attention of this Court to the order passed by the appellate authority, i.e. Deputy Commissioner, Kangra at Dharamshala, dated 9th April, 2007. It is apparent from the appellate order dated 9.4.2007 that the same is a non-speaking order. The appellate authority was required to discuss the entire evidence led by the parties before the Authorized Officer. The contentions raised by the parties before him were to be discussed *vis-a-vis* the evidence led by the parties. The appellate authority after taking note of the submissions of the parties had abruptly up-held the order of the Sub-Divisional Officer (Civil), Jaisinghpur in a very laconic manner. Since the order passed by the appellate authority was required to be judicially reviewed by this Court and the same was thus required to be reasoned. The appellate authority has failed to exercise the jurisdiction vested in him being the appellate authority. The duty to assign reasons becomes more stringent upon the appellate authority since he was dealing with the election of the Pradhan of the Gram Panchayat who was duly elected. It is the duty cast upon the appellate authority to ensure that there was no mis-reading or mis-appreciation of the evidence led by the parties and all the contentions raised by the parties were properly looked into by the Authorized Officer.

The learned Advocate General contended that since the appellate authority had up-held the order of the Authorized Officer, no reasons were required to be assigned by the appellate authority. The submission of the learned Advocate General is

untenable in view of the law laid down by the Hon'ble Supreme Court that the appellate authority must apply its mind while disposing of the appeal and should assign its own reasons even though it may be affirming the decision rendered by the lower authority.

Their Lordships of the Hon'ble Supreme Court have held in ***Bhagat Raja v. Union of India, AIR 1967 Supreme Court 1606*** since the decisions of Tribunals in India are subject to the supervisory powers of the High Court under Article 227 of the Constitution of India and of appellate powers of the Supreme Court under Article 136, it goes without saying that both the High Court and the Supreme Court are placed under a great dis-advantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected" or "dismissed". Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"Let us now examine the question as to whether it was incumbent on the Central Government to give any reasons for its decision on review. It was argued that the very exercise of judicial or quasi judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Art. 227 of the Constitution and of appellate powers of this Court under Art. 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is**

dismissed curtly by the use of the single word "rejected", or, "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This sill certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a "speaking order" is called for."

The Hon'ble Supreme Court has held in ***M/s. Travancore Rayons Ltd. v. The Union of India and others, AIR 1971 Supreme Court 862*** that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power. Their Lordships have held as under:-

> **"In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to**

reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

Similarly, their lordships of the Hon'ble Supreme Court have held in ***The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another, AIR 1976, Supreme Court 1785*** that quasi-judicial order must be supported by reasons. Their Lordships have held as under:-

"Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Tessteels Ltd., C.A. No.245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain

disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its

order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs Authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

The Hon'ble Supreme Court has held in ***State of West Bengal v. Atul Krishna Shaw and another, AIR 1990 Supreme Court 2205*** that unless adequate reasons are given, merely

because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. Their Lordships have held as under:-

> **"The appellate authority being final authority on facts is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why he disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority."**

Their Lordships of the Hon'ble Supreme Court in a latest judgment ***Narinder Mohan Arya Versus United India Insurance Co. Ltd. and Others, (2006) 4 SCC 713*** have held that the appellate authority while disposing of the appeal was required to apply his mind. Their Lordships have further held that an appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind. Their Lordships have held as under:-

> "**We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the Appellate Authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:**

"37. *Consideration of appeals*.-(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

"40. *Memorial*. – An employee whose appeal under these Rules has been rejected by the Chairman/Chairman-cum-Managing

Director or in whose case such Appellate Authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such Appellate Authority.

The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with

the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

The upshot of the above discussion is that the present writ petition can be allowed on the short ground that the appellate order dated 9.4.2007 is not a speaking order. The appellate authority was discharging quasi-judicial functions and the reasons were required to be assigned while dismissing the appeal instead of curtly rejecting the same.

Consequently, the writ petition is allowed. The order dated 9.4.2007 is quashed and set aside and the matter is remanded back to the Deputy Commissioner, Kangra at Dharamshala with a direction to decide the same afresh and to dispose of the same by a speaking order. No order as to costs.

September 05, 2007. **(Rajiv Sharma) Judge.**
(sck)